

## **CHAPTER 69-02-02 PLEADINGS**

### **Section**

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### **69-02-02-01. Informal complaint.**

1. **Form and disposition.** Informal complaints may be made orally or in writing. Letters to the commission will be considered informal complaints. Informal complaints may be handled by any of the following methods:
  - a. Correspondence or other informal communications.
  - b. Conference with the parties.
  - c. Formal investigation upon motion of the commission.
  - d. Any other appropriate manner to bring about a resolution without formal hearing.
2. **Rate complaints.** Complaints concerning the rates or charges of any heat, gas, or electrical public utility made by less than ten percent of the consumers or purchasers shall be treated as informal complaints.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

### **69-02-02-02. Formal complaints.**

1. **Complaints.** Complaints may be made by the commission on its own motion, or by any person. Complaints will be in writing and set forth the act or omission complained of. If the complaint is against the reasonableness of any rate or charge of any heat, gas, or electrical public utility, the commission cannot entertain it unless it is signed by the governing body of the county or city, if any, within which the alleged

violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, or electrical service.

2. **Form and content.** A formal complaint must show the venue, "Before the Public Service Commission of North Dakota" and will contain a heading showing the name of the complainant and the name of each respondent. The complaint must include the name, address, and telephone number of each complainant's attorney, if any. The complaint will be drawn to fully advise the respondent and the commission of the factual and legal grounds of the complaint, the injury complained of, and the specific relief sought.
3. **Number of copies.** At the time the complaint is filed, the complainant must also file a copy for each respondent plus seven additional copies.
4. **Sufficiency of complaint.** Upon the filing of a formal complaint, the commission will determine whether it states a prima facie case and conforms to this article. If the complaint does not state a prima facie case or does not conform to this article, the commission will notify the complainant and provide the complainant an opportunity to amend within a specified time. If the complaint is not amended, it will be dismissed. The filing of an answer is not an admission of the sufficiency of the complaint.
5. **Service.**
  - a. If the complaint is sufficient, the commission will serve a copy of the complaint and the commission's notice on each respondent.
  - b. The commission will serve the complaint and notice of hearing personally or by certified mail at least forty-five days before the time specified for hearing. Service of a complaint and notice of hearing may be waived, in writing, by the respondent. The parties may agree upon a time and place for hearing, with the consent of the commission. In case of an emergency the commission may notice a proceeding for hearing upon its merits upon less than forty-five days' notice. The time provided for the respondent's answer must be adjusted accordingly. However, hearings on a renewal, suspension, or revocation of a license may not be held on less than ten days' notice, unless a statute specifically allows or requires suspension or revocation without a hearing.

**History:** Amended effective September 1, 1992; January 1, 2001.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 49-01-07

#### **69-02-02-03. Answers.**

1. **Filing.** Answers to complaints must be filed within twenty days after service of the notice of hearing and complaint.
2. **Content.** Each answer must contain:
  - a. The title of the proceeding and docket number;
  - b. The name and address of each answering party;
  - c. A specific denial of each material allegation of the complaint which is controverted by the respondent;
  - d. A statement of any new matter which may constitute a defense;  
and
  - e. The name, address, and telephone number of each of the respondent's attorneys, if any.

If the answering party has no information or belief upon the subject sufficient to enable the party to answer an allegation of the complaint, the party may so state in the answer and place the denial upon that ground.

3. **Service and number of copies.** The original answer and seven copies thereof must be filed with the executive secretary of the commission. The respondent shall serve a copy of its answer personally, or by certified mail, upon each complainant. The respondent shall certify to the commission that the service has been made.

**History:** Amended effective September 1, 1992; January 1, 2001.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 49-01-07

**69-02-02-04. Application.** An application is a proceeding seeking some right, privilege, or authorization which the commission may give under statutory or other authority administered by it.

1. **Contents.** Applications must be in writing and must:
  - a. Set forth the full name and post-office address of the applicant;
  - b. State clearly and concisely the authorization or permission sought;  
and
  - c. Cite by appropriate reference the statutory provision or other authority under which the commission authorization or permission is sought.

2. **Number of copies.** An original and seven copies of an application must be filed.

3. **Articles of incorporation or partnership agreement.**

- a. Corporations. If the applicant is a corporation, a certified copy of its articles of incorporation must be annexed to the application. An original certificate of good standing must also be filed.
- b. Partnerships. If the applicant is a partnership, the partnership agreement and any fictitious name certificate must be filed.
- c. If the applicant's articles of incorporation or partnership agreement have already been filed with the commission in some prior proceeding, it is sufficient if this fact is stated in the application and reference is made to the case number and number of the prior proceeding.

4. **Financial statement.** Whenever the commission requires the filing of a financial statement by any utility, the applicant shall file consolidated financial statements for the most recent fiscal year using generally accepted accounting principals or, if applicable, accounting standards required by federal regulatory jurisdictions. Each financial statement must include:

- a. A balance sheet of the form and style usually followed in the industry.
- b. An income statement of the form and style usually followed in the industry.
- c. If available, an independent accountant's financial opinion.
- d. Any other information requested by the commission.

**History:** Amended effective September 1, 1992; January 1, 2001.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-02-05. Intervention.** Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. **Contents of petition to intervene.** A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. **When filed.** A petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.
3. **Number of copies.** The petitioner will serve a copy of the petition on each party to the proceeding and will file with the commission the original and seven copies.
4. **Effect.** Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by an order of the commission in such proceeding.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-08.2, 49-01-07

**69-02-02-06. Extensions of time.** A request for an extension of time must be by timely written motion stating the facts on which the motion rests.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-02-07. Amendments and withdrawals.**

1. **Amendments.** The commission may, after notice to the other parties to a proceeding, allow any pleading to be amended and may permit any party affected by the amendment a reasonable time to prepare to meet the changed issues. If the amendment is to an application by a public utility for a rate increase based in whole or in part on the utility's revenue and profitability, and the amendment substantially changes the application, the change must be considered a new filing under North Dakota Century Code section 49-05-06.
2. **Withdrawals.** A participant desiring to withdraw a pleading filed with the commission may file a notice of withdrawal. The notice must set forth the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other participants and a certificate of service to that effect must be filed with the notice of withdrawal. This section does not allow, without express permission of the commission, withdrawal of any

pleading in any proceeding in which a hearing has been held or convened.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-08.1, 49-01-07

**69-02-02-07.1. Amendment at hearing.** Substantial change from or amendment to the original application which occurs during hearing must be considered an amendment to the pleadings under section 69-02-02-07.

**History:** Effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-02-08. Motion.** All motions shall be in writing, unless made at a hearing, and shall be served on the other parties to the proceeding.

1. **Argument.** The commission may set any motion for oral argument.
2. **Disposition.** The hearing officer designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the commission prior to the commencement of the hearing, if an immediate ruling is essential in order to proceed with the hearing. If a ruling upon a motion would involve or constitute a final determination of the proceeding, the motion may not be ruled upon by a hearing officer.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-02-09. Show cause orders.**

1. The commission may, by order, compel any person to whom it has granted authority to show cause why the authority should not be suspended, changed, or revoked in whole or in part. The term "authority" includes a certificate, license, and permit.
2. The commission may, by order, compel any person subject to its jurisdiction to show cause why the person has failed to comply with applicable laws, rules, or orders of the commission.
3. The order to show cause shall specifically advise the respondent of the violation and of the time and place of the hearing on the order.

4. An order to show cause must be accompanied by an affidavit setting forth the specific factual and statutory basis upon which the order was issued.
5. At the conclusion of show cause proceedings, the commission may enter a cease and desist order or any order it deems just and reasonable.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

